



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

January 12, 2010

CBCA 1707-TRAV

In the Matter of MICHAEL W. SILVA

Michael W. Silva, Yamaguchi-ken, Japan, Claimant.

W. M. Schrader, Disbursing Officer, United States Marine Corps, FPO Area Pacific, appearing for Department of Defense.

BORWICK, Board Judge.

Claimant, a civilian employee of the United States Department of the Navy, United States Marine Corps (agency), transferred from Orlando, Florida, to the Marine Corps Air Station (MCAS), Iwakuni, Japan. After working for approximately three and one-half years at the Iwakuni post, claimant separated from government service. Instead of relocating to Orlando, he found full-time employment in Iwakuni and stayed there. Nevertheless, shortly after his separation, claimant took a three-week round trip with his family from Hiroshima, Japan, to Orlando. Claimant sought from the agency one-way reimbursement for the outbound leg of that trip as a separated employee returning to his original continental United States (CONUS) residence from a location outside the continental United States (OCONUS). The agency's finance office denied reimbursement because claimant relocated to Iwakuni, an alternate destination, not to Orlando. We agree with the agency's finance office and deny the claim. The agency correctly applied statute, the Federal Travel Regulation (FTR), and the Joint Travel Regulations (JTR).

Background

On or about August 31, 2005, claimant transferred to Iwakuni, Japan, from Orlando, Florida, to work with the agency as a budget officer at the MCAS in Iwakuni. Claimant worked at Iwakuni until February 27, 2009, when he resigned to become a minister and senior pastor at the Calvary Chapel, near Iwakuni.

In early November 2008, claimant began discussions with the Calvary Chapel about possible employment as a minister there. At the end of November 2008, claimant was told he would be hired by the Calvary Chapel, and on February 27, 2009, he was hired as a minister under a three-year contract, with the employment contract being automatically renewed for successive three-year periods, unless terminated by either party.

On January 22, 2009, the agency's Civilian Human Resource Office (CHRO) issued travel orders stating that claimant was returning to Orlando, Florida, as claimant's "actual residence." The next day, the CHRO issued amended orders stating that claimant's "new official station and location, actual residence, or alternate destination" was an off-base address in Iwakuni. The CHRO explains that it issued the amended travel orders to enable claimant to move his household goods (HHG) from the MCAS to the alternate destination in Iwakuni because the Travel Management Office would not move his HHG to that destination without amended travel orders. Claimant states that he requested his HHG be moved to Iwakuni rather than his old residence in Orlando because he had taken a job with the Calvary Church.

On or about March 17, 2009, claimant and his family flew from Hiroshima, Japan, to Orlando, Florida. Claimant and his family stayed in Orlando until April 11, when they returned to Japan. Claimant states that at no time was he advised by the CHRO that he would not be reimbursed for his trip to Orlando. Claimant further explains that he wanted to exercise his return rights to Orlando by physically returning to Orlando with his family.

Claimant submitted a travel voucher for reimbursement of one-way fare for himself and his family between Hiroshima and Orlando. The agency's finance office denied reimbursement because Orlando, Florida, was not his actual residence after separation. Claimant appealed that decision to the Board.

Discussion

Agencies may pay travel and transportation expenses of employees who return from posts of duty overseas to which they were transferred, pursuant to applicable regulations. 5 U.S.C. §§ 5722, 5724(d) (2006); *Thomas W. Jung*, CBCA 1519-RELO, 09-2 BCA ¶ 34,216.

The FTR in effect at the time of claimant's separation provides in pertinent part in subpart D of chapter 302, entitled "relocation separation":

Must my agency pay for return relocation expenses for my immediate family and me once I have completed my duty OCONUS?

Yes, once you have completed your duty OCONUS as specified in your service agreement, your agency must pay one-way transportation expenses for you and your family member(s) and your household goods.

41 CFR 302-3.300 (2007); *see Robert J. Posey*, CBCA 1112-RELO, 08-2 BCA ¶ 33,940. Separation travel must occur no later than two years from the effective date of separation. 41 CFR 302-3.315.

The supplemental JTR provide:

SEPARATION TRAVEL FROM OCONUS DUTY

Eligible Employee. An employee is authorized travel and transportation allowances to the actual residence upon separation from Federal service if the employee has:

1. A service agreement providing for return travel and transportation allowances; and
2. Served the period required in the current service agreement or that service period requirement has been waived because separation is for reasons beyond the employee's control that are acceptable to the employee's activity; and
3. Resigned or been separated involuntarily. A resignation must be executed before the employee leaves the OCONUS activity.

JTR C5085-A. The JTR also provide:

B. Separation Travel and Transportation Allowances.

An employee is:

1. Authorized travel and transportation allowances for travel from the OCONUS PDS [permanent duty station] to the actual residence established at the time of appointment/transfer to the OCONUS PDS.
2. Authorized travel and transportation allowances for travel to an alternate destination NTE [not to exceed] the constructed cost for travel from the OCONUS PDS to the actual residence.

3. Personally financially responsible for any excess costs.
4. Not authorized travel and transportation allowances if separated from a PDS in the same locality as the actual residence/alternate location.

JTR C5085-B (case citation omitted).

In short, the relevant statute and implementing regulations provide transportation and HHG-shipment benefits to the place where the employee relocates after separation from an OCONUS station. If the separating employee relocates to what was the original CONUS residence at the time of assignment, the employee is entitled to reimbursement of allowable travel and shipment of HHG expenses to that destination. If that employee chooses to remain abroad after separation, the employee is entitled to the allowable expenses in relocating to the alternate destination, not to exceed the cost of relocating to the CONUS residence at the time of overseas assignment. *See Thelma Grimes*, 63 Comp. Gen. 281 (1984).

Claimant relocated to Iwakuni, not to Orlando, from the MCAS. Claimant chose to remain at Iwakuni after separation, having moved his HHG to off-base premises in Iwakuni, and having accepted employment abroad for at least three years. Claimant was, in fact, reimbursed the cost of the shipment of his HHG to that alternate destination. Claimant's three-week trip with his family to Orlando, Florida, is not a relocation to Orlando after separation.

The agency CHRO's travel authorization granting what turned out to be temporary family travel to Orlando was illegal and does not enlarge his entitlement beyond that contemplated by statute and regulation. *Lou Ann McCracken*, CBCA 1505-RELO, 09-2 BCA ¶ 34,194. The Board denies the claim.

ANTHONY S. BORWICK
Board Judge